

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cassandra Fenkel	Team: Squad #6	CCRB Case #: 201810687	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 12/15/2018 11:30 PM, Sunday, 12/16/2018	Location of Incident: [REDACTED]	Precinct: 112	18 Mo. SOL 6/15/2020	EO SOL 1/30/2021	
Date/Time CV Reported Sun, 12/16/2018 1:34 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 12/24/2018 10:46 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Stephen Sheehan	26103	964290	104 PCT
2. POM Patrick Nessler	06263	963668	104 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Stephen Sheehan	Discourtesy: Police Officer Stephen Sheehan spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Patrick Nessler	Discourtesy: Police Officer Patrick Nessler spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Stephen Sheehan	Force: Police Officer Stephen Sheehan used a chokehold against § 87(2)(b) [REDACTED]	[REDACTED]
D.POM Stephen Sheehan	Force: Police Officer Stephen Sheehan restricted § 87(2)(b) [REDACTED]'s breathing.	[REDACTED]
E.POM Stephen Sheehan	Force: Police Officer Stephen Sheehan used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
F.POM Stephen Sheehan	Abuse: Police Officer Stephen Sheehan damaged § 87(2)(b) [REDACTED]'s property.	[REDACTED]

Case Summary

On December 16, 2018, Sgt. Marcos Diaz of the 104th Precinct called the IAB Command Center and reported the following incident on behalf of § 87(2)(b) who alleged that an officer used physical force against him. This complaint was received at the CCRB on December 24, 2018.

On December 15, 2018, at approximately 11:30 p.m., § 87(2)(b) was arrested for driving while intoxicated and transported to the 112th Precinct stationhouse's Intoxicated Driver Testing Unit (IDTU) by PO Stephen Sheehan and PO Patrick Nessler, both of the 104th Precinct.

§ 87(2)(b) asked the officers why he was arrested and PO Sheehan allegedly ordered § 87(2)(b) to "shut the fuck up" (**Allegation A: Discourtesy**, § 87(2)(g)). § 87(2)(b) told the officers that he wanted to know what his charges were and PO Nessler allegedly stated, "Oh you fucking think you're tough. Who the fuck do you think you are talking like that?" (**Allegation B: Discourtesy**, § 87(2)(g)). § 87(2)(b) leaned forward and lifted his back off the seat of the patrol car, at which point PO Sheehan allegedly ordered him to "sit the fuck back" (**Allegation A continued**). PO Sheehan allegedly grabbed § 87(2)(b)'s neck, restricting his breathing, and pulled § 87(2)(b) back against the seat (**Allegation C – D: Force**, § 87(2)(g)). While doing so, PO Sheehan allegedly scratched § 87(2)(b)'s neck with his fingernails (**Allegation E: Force**, § 87(2)(g)) and ripped his hoodie (**Allegation F: Abuse of Authority**, § 87(2)(g)).

There is no video evidence in this case.

Findings and Recommendations

Allegation A – Discourtesy: Police Officer Stephen Sheehan spoke discourteously to

§ 87(2)(b)

Allegation B – Discourtesy: Police Officer Patrick Nessler spoke discourteously to § 87(2)(b)

§ 87(2)(b) (Board Review 02) testified that he was involved in a motor vehicle accident followed by a physical altercation, at which point officers arrived on scene and placed him under arrest. § 87(2)(b) was driven to the 112th Precinct stationhouse by PO Nessler and PO Sheehan. PO Nessler drove, PO Sheehan sat in the backseat behind PO Nessler, and § 87(2)(b) sat in the rear passenger's seat. A few minutes into the drive, § 87(2)(b) asked the officers why he was arrested and PO Sheehan allegedly stated, "Shut the fuck up." § 87(2)(b) told PO Sheehan, "Don't fucking speak to me that way" and stated that he was not a child and wanted to know what his charges were. PO Nessler allegedly stated, "Oh you fucking think you're tough. Who the fuck do you think you are talking like that?" § 87(2)(b) leaned his upper body forward and lifted his back off the seat of the patrol to relieve pressure on his handcuffs and PO Sheehan allegedly ordered him to "sit the fuck back."

PO Sheehan (Board Review 03) testified that shortly into the drive, § 87(2)(b) yelled that he and PO Nessler were "crackers" and "faggots" and asked what he was arrested for. PO Sheehan testified that he and PO Nessler each ordered § 87(2)(b) to relax and calm down. In response, § 87(2)(b) said, "You calm down!" and "Fuck you!" PO Sheehan denied that he ever told § 87(2)(b) to "shut the fuck up" and denied that PO Nessler ever stated, "Oh you fucking

think you're tough. Who the fuck do you think you are talking like that?" As § 87(2)(b) yelled, he leaned his torso forward and lifted his back off the seat. PO Sheehan ordered § 87(2)(b) to sit back, but denied that he used any profanity or ordered § 87(2)(b) to "sit the fuck back."

PO Nessler (Board Review 04) testified that during the drive, § 87(2)(b) stated that he and PO Sheehan were racist and only arrested him because he was Hispanic and had tattoos. PO Nessler denied that he ever stated, "Oh you fucking think you're tough. Who the fuck do you think you are talking like that?" PO Nessler did not recall there being any issue with § 87(2)(b) leaning forward in the patrol car and denied hearing PO Sheehan tell § 87(2)(b) to "sit the fuck back" or "shut the fuck up."

§ 87(2)(b), § 87(2)(g)

Allegation C – Force: Police Officer Stephen Sheehan used a chokehold against § 87(2)(b)

Allegation D – Force: Police Officer Stephen Sheehan restricted § 87(2)(b)'s breathing.

Allegation E – Force: Police Officer Stephen Sheehan used physical force against § 87(2)(b)

Allegation F – Abuse of Authority: Police Officer Stephen Sheehan damaged § 87(2)(b)'s property.

§ 87(2)(b) testified that after PO Sheehan allegedly ordered him to "sit the fuck back" he refused to do so because his handcuffs were uncomfortable. PO Sheehan then allegedly grabbed § 87(2)(b)'s neck with both of his hands and pulled him back into his seat. § 87(2)(b) initially testified that PO Sheehan squeezed his neck for six seconds, which restricted his breathing, but later testified that he could not recall if PO Sheehan restricted his breathing. § 87(2)(b) alleged that PO Sheehan scratched him with his fingernails when he grabbed him, resulting in lacerations to his neck. PO Sheehan also allegedly ripped § 87(2)(b)'s hoodie. § 87(2)(b) could not specifically describe how this occurred aside from that PO Sheehan allegedly ripped his hoodie when he grabbed his neck.

§ 87(2)(b) provided the CCRB with photographs of his neck and his hoodie, taken on December 17, 2018. The photographs (Board Review 05, Board Review 06) depict two red marks on the back of § 87(2)(b)'s neck and one red mark on the side of § 87(2)(b)'s neck. The photograph (Board Review 07) of § 87(2)(b)'s hoodie depicts a rip near the collar.

§ 87(2)(b)'s medical records (Board Review 08) report that he was brought to § 87(2)(b) Hospital while in police custody after behaving belligerently in a holding cell. While at the hospital, § 87(2)(b) complained of neck pain and an abrasion was noted on the right side of § 87(2)(b)'s neck. However, § 87(2)(b)'s medical records do not describe how § 87(2)(b) sustained his neck pain or abrasion. § 87(2)(b) was diagnosed with a cervical sprain and discharged with instructions to follow up with his primary care doctor and take Ibuprofen.

PO Sheehan corroborated that § 87(2)(b) leaned his torso forward and lifted his back off the seat during the drive. PO Sheehan ordered § 87(2)(b) to calm down and sit back. § 87(2)(b) intermittently did so, but continued to lean forward every time he spoke. PO Sheehan

continued to order § 87(2)(b) to sit back, but noted that he had no concern of § 87(2)(b) escaping because he was handcuffed and wearing a seatbelt. PO Sheehan denied that he used any physical force against § 87(2)(b) and denied that he ever grabbed § 87(2)(b) by the neck. PO Sheehan denied that he did anything which could have restricted § 87(2)(b)'s breathing and denied that he ripped § 87(2)(b)'s hoodie.

PO Nessler testified that he had no recollection of § 87(2)(b) leaning forward in his seat during the drive to the stationhouse. PO Nessler denied seeing PO Sheehan use any physical force against § 87(2)(b) or do anything which could have restricted his breathing or ripped his hoodie.

Both PO Sheehan and PO Nessler denied seeing any scratches to § 87(2)(b)'s neck or rip to his hoodie as depicted in § 87(2)(b)'s photographs. PO Sheehan noted that he saw a rash-like mark on § 87(2)(b)'s neck during this incident, but recalled it being larger than the abrasions depicted in his photographs. PO Sheehan denied using any force which could have caused scratches to § 87(2)(b)'s neck or a rip to his hoodie, and PO Nessler denied seeing him do so.

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 09).
- PO Sheehan has been a member of service for one year and this is the first CCRB complaint to which he has been a party.
- PO Nessler has been a member of service for two years and has been a subject in one CCRB complaint and one allegation, which remains open with the Investigations Division.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- A Notice of Claim Inquiry was submitted to the New York City Office of the Comptroller on April 15, 2019 and will be included in the case file upon its receipt (Board Review 10).
- According to the Office of Court Administration (OCA), between December 10, 2001 and April 15, 2019, § 87(2)(b) was convicted of disorderly conduct (nine times), driving while ability impaired (once), § 87(2)(b) and assault in the third degree (once). § 87(2)(b) received § 87(2)(b) OCA does not list any other convictions (Board Review 11).

Squad No.: #6

Investigator: _____

Signature _____ Print Title & Name _____ Date _____

Squad Leader: _____

Signature Print Title & Name Date

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____